IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3951 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

VADILAL LOVJI PATEL & 4 - Petitioner(s)
Versus
DIRECTOR GENERAL & INSPECTOR GENERAL OF POLICE & 2 - Respondent(s)

==========

Appearance :
MR NIRZAR S DESAI for Petitioner(s) : 1 - 5.
MR SIRAJ GORI, AGP for Respondent(s) : 1 - 3.

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 19/04/2006

ORAL JUDGMENT

1.In this petition, the petitioners have challenged the validity of a Government Circular dated 01-08-1998 which is produced at Annexure-C to the petition. It is

also prayed that circular at Annexure-C should not affect the petitioners and that they are entitled to be transferred to the stream of Unarmed Constables. During the pendency of the petition, an amendment application being civil application no. 5345/2004 came to be filed and allowed by an order dated 08-09-2004. By virtue of the said amendment, the petitioners added prayer clause 10(BB) to the petition praying that an order or direction be issued directing the respondents to place the petitioners in Unarmed Cadre as police constable with effect from the date of their appointment with all consequential benefits as the petitioners were placed higher in the select list and the persons having lower merits have been placed in Unarmed cadre.

2. The petitioners had applied for selection to the post of constables in the police department of the State of Gujarat pursuant to an advertisement issued by the State Government sometime in the year 1987. The petitioners were duly selected and appointed as constables in November, 1987 and April 1988. It is the case of the petitioners that at the time of the interview, selection and appointment, they were not informed whether they are being selected for the post

of Armed Constable or Unarmed Constable. Eventually, however, all the petitioners came to be appointed as Armed Constables by appointment order issued in November, 1987 and April 1988 as mentioned above. The petitioners were keen to be appointed as Unarmed Constables. A circular dated 1-8-1988 was however, issued by the State Government which prevented transfer of Armed Constables to the stream of Unarmed Constables under certain circumstances. It is stated in the said circular that training for Armed Constables and Unarmed Constables is different and, therefore, also such transfer should not be resorted to. As noted earlier since the petitioners were interested for being absorbed in the stream of Unarmed Constables, they filed the present petition challenging the circular dated 1-8-1988.

3. During the pendency of the petition, the petitioners filed civil application no. 5345/2004 seeking amendments in the main petition. Such civil application came to be allowed by order dated 08-09-2004 as noted above. Through the amendment, the petitioners introduced certain factual averments in the petition. It was contended that the petitioners were higher in

the merit list as emerging from the select list prepared by the respondents for the purpose of making their appointments. It is averred that persons with less merits and who were below in the select list were absorbed in the cadre of Unarmed Constables whereas the petitioners who were higher in the merit were appointed as Armed Constables. This according to the petitioners was wholly illegal and arbitrary. Consequential prayer clause 10(BB) also came to be added, contents of which have been noted here-in-above.

4. In so far as challenge of the petitioners to circular dated 1-8-1988 (Annexure-C) is concerned, same deserves a summary disposal. The learned AGP Shri Gori pointed out that legality of this very circular came to be examined by the Learned Single Judge of this Court in the case of Amrutbhai Dhanjibhai Rathod and ors, v. State of Gujarat & ors. reported in 1997(2)GLH 867, and circular is held to be legal and valid. He further submitted that in the said decision of Amrutbhai Dhanjibhai Rathod and ors, v. State of Gujarat & ors. (supra), Learned Single Judge found that mode of recruitment for the post of Unarmed Constable is direct recruitment and such post cannot be filled by transfers

from existing Armed Constables. The learned advocate Shri Desai also was unable to draw any distinction in so far as the decision of Learned Single Judge in the case of Amrutbhai Dhanjibhai Rathod and ors, v. State of Gujarat & ors.(supra) is concerned. The challenge of the petitioners to circular dated 1-8-1988 therefore, cannot be upheld.

5. The second aspect of the challenge of the petitioners as introduced by the amendment and in particular by paragraph 10(BB) is regarding their initial recruitment as police constables. The petitioners have sought to build a case that in the select list prepared for the purpose of making appointment to the post of Constables, the petitioners' names figured between serial no. 28 to 78. Persons below the said numbers have been absorbed in the cadre of Unarmed Constables. The petitioners were however, appointed as Armed Constables. It is therefore, the case of the petitioners that the Government could not have ignored their merits and ignored their preference for being absorbed as Unarmed Constables. In this regard reliance has been placed on the decision of Learned Single Judge of this Court (Coram : S.K.Keshote,J.) in Special Civil

Application No.10594/1999 and allied matters decided on 19-10-2000. From the said decision, learned advocate Shri Desai pointed out that the learned Judge came to the conclusion that for the purpose of being absorbed in the cadre of Unarmed Constables, the Government could not have ignored the merits of more meritorious candidates. He pointed out that Letters Patent Appeal filed against the decision of the learned Judge has also been rejected. Relying on the said decision as upheld by Division Bench, learned advocate submitted that the petitioners also should be ordered to be absorbed in the cadre of Unarmed Constables on the basis of their merit position.

6. On the other hand, learned AGP Shri Gori submitted that the petitioners cannot rake up such an old issue at this distant point of time. The petitioners were appointed in the year 1987 and at the time of their appointment they have never raised grievance regarding being appointed to the post of Armed Constables. Even when they filed the petition, the thrust of their argument was that the circular dated 1-8-1988 cannot be enforced against them to prevent their transfer from the cadre of Armed Constable to Unarmed Constable. No

case was set up to suggest that according to their merits in the selection process, they were required to be absorbed as Unarmed Constables. Such amendment was sought only in the year 2004. At such a belated stage, such a request cannot be permitted to be made.

7. Having heard the learned advocates appearing for the parties and having perused the material on record, I find that the earlier petition was filed by the petitioners for the purpose of securing their transfer from the cadre of Armed Constables to the post of Unarmed Constables. The challenge to the circular and request of the petitioner for such a transfer apparently could not have been accepted in view of the decision of the Learned Single Judge in the case of Amrutbhai Dhanjibhai Rathod and ors, v. State of Gujarat & ors.(supra). Much thereafter, in the year 2004, the petitioners sought and were granted amendment in the petition. By way of amendment, the petitioners included two aspects hitherto not found in the main petition. First was their assertion that they were more meritorious than some of the candidates who were absorbed as Unarmed Constables, despite which they were appointed as Armed Constable. The second aspect of the

matter was consequential prayer made for being absorbed as Unarmed Constable from the initial date of their appointment.

8. It is not in dispute that the petitioners were appointed as Unarmed Constables in the year 1987 and 1988. Right upto year 2004, the petitioners never made any grievance about being absorbed as Armed Constables though they were found to be more meritorious than other selectees who were appointed as Unarmed Constables. Relying on the decision of this Court in the case of Prakashchand Jogaram Prajapati v. State of Gujarat dated 19-10-2000 passed in Special Civil Application No. 10594/1999, it is sought to be suggested that the petitioners herein also should be ordered to be absorbed as Unarmed Constables as they were more meritorious than other candidates who were so appointed on the said post.

9. I am afraid the challenge of the petitioners at this belated stage cannot be entertained. Though it is true that Learned Single Judge in the decision of Amrutbhai Dhanjibhai Rathod and ors, v. State of Gujarat & ors. (supra)did hold that for the purpose of giving

preference for the post of Unarmed Constables, merit cannot be ignored and it may also be true that on the strength of their merits, the petitioners at relevant time may have had a claim for being absorbed as Unarmed Constables, but in the present petition at this distant point of time, it would not be either possible or proper to give such a direction. The petitioners have been discharging their duties in the stream of Armed Constables since 1987-1988. Their colleagues who were similarly appointed on the post of Unarmed Constables must also have been working similarly since their appointments. The appointees of both the streams would have received the promotions in their streams in their turn by now. The petitioners never received training for the post of Unarmed Constables though there is difference in the training between the two cadres. Directing the department now to consider the petitioners as Unarmed Constables from the date of their appointment would create administrative difficulties and upheaval in the cadre. Equal number of persons would have to be brought over to the Armed Constables field. Such persons are not before this court. They have been discharging their duties as Unarmed Constables since nearly two decades now.

Considering all these aspects of the matter, I find that the belated challenge of the petitioner to their absorption as Armed Constable cannot be entertained.

10.In the result, the petition fails, is hereby rejected. Rule is discharged with no order as to costs.

(Akil Kureshi,J.)

(raghu)